

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANN MITCHELL,

Plaintiff,

v.

HALLMARK HEALTH SYSTEM, INC./
LAWRENCE MEMORIAL HOSPITAL
and JULIE CHASE SHAUGHNESSY,

Defendants.

Civil Action No. 04-cv-12169-REK

MOTION TO DISMISS AMENDED COMPLAINT COUNTS II THROUGH X

The Defendants, Hallmark Health System, Inc./Lawrence Memorial Hospital and Julie Chase Shaughnessy, hereby move to dismiss Counts II through X of the Amended Complaint. The Plaintiff's federal and state employment discrimination claims (Counts II through VIII) should be dismissed as barred by the exclusivity provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* ("FMLA"), and because, taking the Amended Complaint's factual allegations as true, the Plaintiff has plainly failed to state cognizable causes of action for disability discrimination, age discrimination and retaliation. The Plaintiff's common law claims (Counts IX and X) should also be dismissed as barred by the exclusivity provisions of the FMLA, as well as the exclusivity provisions of the applicable federal and state employment discrimination statutes and the Massachusetts Workers' Compensation Act, Mass. Gen. L. c. 152 ("WCA"), and/or because they fail to state claims on which relief can be granted.

In support of this Motion, the Defendants submit the accompanying Memorandum of Law in Support of its Motion to Dismiss Amended Complaint Counts II Through X.

REQUEST FOR ORAL ARGUMENT

At its Scheduling Conference with the parties, the Court set oral argument on this Motion for Wednesday, February 16, 2005 at 11 a.m.

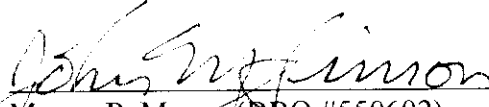
Respectfully submitted,

HALLMARK HEALTH SYSTEM, INC./
LAWRENCE MEMORIAL HOSPITAL and
JULIE CHASE SHAUGHNESSY

By their attorneys,

Certificate of Service

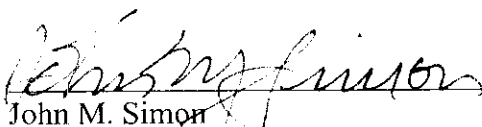
I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail ~~(by hand)~~ on 12-30-04.


Macon P. Magee (BBO #550602)
John M. Simon (BBO# 645557)
Stoneman, Chandler & Miller, LLP
99 High Street
Boston, MA 02110
(617) 542-6789

Dated: December 30, 2004

Certification Pursuant To Local Rule 7.1(A)(2)

I hereby certify, pursuant to Local Rule 7.1(A)(2), that on multiple occasions between October 22, 2004 and December 1, 2004, I have discussed the subject matter of this motion with Plaintiff's counsel Alice Whitehill Wiseberg, Esq. in a reasonable and good faith effort to resolve and/or narrow the issues addressed in this motion.


John M. Simon